IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3253 OF 2005

IN

SUIT NO.2959 OF 2005

Mrs.Meena Akhtar Rizvi. ...Plaintiff.

vs.

1.Birender Singh s/o.Sardar Mahal Singh & others. ...Defendants

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Mr.R.R.Kalekar, for Plaintiff.

Mr.Niranjan Lapasiya i/b. Niranjan & Co., for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 26th June,2007.

P.C.:-

1. This is a notice of motion taken out by the plaintiff. The plaintiff has filed a suit for decree of specific performance of the agreement of sale. The defendant no.1 admits that the

defendant no.1 is part owner of the land. The defendant no.1 also admits that the defendant no.1 entered into an agreement to sale the land to M/s.B.B.Builders in the year 1980. With the consent of defendant no.1, the plaintiff entered into an agreement with M/s.B.B.Builders for sale of the land to the plaintiff. The plaintiff claims that the total amount of consideration agreed was Rs.35,00,000/- (Rupees Thirty five lakhs only). The plaintiff claims that the substantial amount has been paid. It is also an admitted position that the plaintiff is in possession of the property which is substantially occupied by the tenants. The learned Counsel appearing for defendant no.1 submits that the plaintiff has not joined all the co-owners as parties to the suit and that the plaintiff has not paid any amount of consideration to the owners. The learned Counsel appearing for plaintiffs submits that the plaintiffs have made substantial payment to the owners and also to

M/s.B.B.Builders with whom they had entered into an agreement. He states that without prejudice to the plaintiff's contention that substantial payment has been made to the owners, the plaintiff is willing to deposit the entire amount of consideration in the Court.

2. In my opinion, considering that the agreements which had admittedly been entered into have been terminated by the notice issued only in the year 2002, considering that the plaintiffs are admittedly in possession since 1981 and willingness of the plaintiff to deposit the entire amount of consideration, the plaintiff is entitled to interim order in terms of prayer clause (d) and (e) and also in terms of prayer clause (f) with addition of words "except in due process of law". The interim order is made subject to the condition that within a period of four weeks from today, the plaintiff shall deposit an amount of Rs.35,00,000/- in this

Court. The amount so deposited shall be invested in fixed deposit in a nationalised bank to the credit of this suit.